

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

ARNULFO RODRIGUEZ,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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**Civil Action 4:18-cv-876-O
(Criminal No. 4:16-cr-029-O (4))**

**ORDER AND INSTRUCTIONS TO PARTIES
IN A MOTION UNDER 28 U.S.C. § 2255**

The United States district clerk for the Northern District of Texas (“the Clerk”) has received and filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct the sentence imposed against defendant/movant Arnulfo Rodriguez, a person in custody under a judgment of this Court, in the above-styled and-numbered cause. No filing fee shall be required.¹ The motion and all further pleadings shall be styled and numbered as set forth above. The Clerk and the parties shall comply with the following directives as indicated:

SERVICE OF PROCESS. Service upon the United States of America of the motion under 28 U.S.C. § 2255, the memorandum in support thereof, all motions filed in this matter by Defendant, this order, and any other order pertinent to the case shall be served electronically on the United States attorney for the Northern District of Texas.² See Fed. R. Crim. P. 49(B); Fed. R. Civ. P. 5(b)(2)(D).

RESPONSIVE PLEADINGS. The United States attorney shall, within 60 days from the date of this order, file an answer, motion, or other response to the motion under 28 U.S.C. § 2255. An answer shall comply with the provisions of Rule 5 of the Rules Governing § 2255 Cases in the United States District Courts. Any claim that the motion under 28 U.S.C. § 2255 should be dismissed as either untimely or as a second or successive motion must be raised by a motion. A true

¹Rodriguez also filed an application/motion to proceed *in forma pauperis*. Mot. IFP, ECF No. 3. Because no filing fee is required to bring a § 2255 motion in district court, the motion should be denied. See *United States v. Gonzalez*, Nos. CR. C-05-424, C.A. 06-249, 2006 WL 2065182, at *2 (S. D. Tex. July 24, 2006) (“For purposes of filing fees, a motion filed under § 2255 is essentially a continuation of the defendant's criminal case”) (citing *United States v. Cole*, 101 F.3d 1076 (5th Cir.1996) (noting that a § 2255 motion was not a civil action for purposes of the Prison Litigation Reform Act)). **The Clerk is directed to note on the docket that the in-forma-pauperis application/motion (ECF No. 3) is DENIED as unnecessary.**

²Such service shall be directed to the attention of the Criminal Section Habeas Attorney, United States Attorney's Office. See Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 3(b).

copy of the answer or any motion, together with a copy of any brief filed therewith, shall be served by mail on Defendant and a certificate must be filed with the Clerk evidencing such service.

TRAVERSE PLEADINGS. The Rules Governing § 2255 Cases do not provide for the filing of traverse pleadings, and no traverse may be filed except as required or permitted by further written order of the Court.

REPLY. Pursuant to Rule 5(d) of the Rules Governing Section 2255 Proceedings, Defendant may file a reply within 30 days following service of the answer, any motion, or other responsive pleading of the United States.

BRIEFS. Briefs, as required or permitted by the provisions of this paragraph, must be submitted on letter-sized paper and must be double spaced. Each argument advanced in the brief, with supporting citations, must clearly specify the specific ground of the motion or numbered paragraph of the pleading it seeks to support or oppose. A copy of any brief must be served by mail on the opposing party or, if he is represented by counsel, on the counsel, and a certificate reflecting such service must be included in the brief. Briefs are required or permitted as follows:

1. **Brief of the United States.** The United States may file such brief as it may deem appropriate.

2. **Reply brief.** A reply brief is not required. However, in any case in which the United States has filed a brief, a reply brief may be filed by the defendant, within 30 days following service upon the defendant of the brief of the United States. Each paragraph of such reply brief must specify the precise paragraph or part of the United States's brief to which reply is being made, and must reply only the argument of the United States. No statement or argument set forth in any brief will be deemed a part of the pleadings or allowed to otherwise advance new grounds for relief, supplement any ground, or support facts set out in the motion.

SO ORDERED this 13th day of November, 2018.


Reed O'Connor
UNITED STATES DISTRICT JUDGE